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November 13, 2001

TRANSMITTED ELECTRONICALLY

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Re: Public Comments On Potential Action Under Section 203 of the
Trade Act of 1974 With Regard to Imports of Certain Steel:
Request For Exclusion

Dear Ms. Blue:

This submission is made on behalf of the Railway Progress Institute (RPI) Committee on Tank Cars (hereafter "Tank Car Committee"), pursuant notice published at 66 Fed. Reg. 54321 (October 26, 2001). The Tank Car Committee is composed of U.S. manufacturers which together account for all domestic production of railway tank cars.¹

The Tank Car Committee respectfully submits that certain articles of steel manufactured for tank cars, described and referred to in this submission as "Type 2 Z-bars," should be excluded from any import relief which the President may implement as a result of the investigation conducted by the U.S. International Trade Commission regarding imports of certain steel products. As detailed below, these steel articles are not manufactured in the United States, and have been and can only be sourced from foreign suppliers.²

¹ The members of the Tank Car Committee are as follows: ACF Industries, Incorporated (St. Charles, MO); GATX Rail Corporation (Chicago, IL); General Electric Railcar Services Corporation (Chicago, IL); Trinity Industries, Inc. (Dallas, TX); and Union Tank Car Company (Chicago, IL).

² A Z-bar is classified under subheading 7216.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS). That subheading provides for "Angles, shapes

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A. Description of the Article: A Z-bar is a steel shape which, in the condition as imported, is in the approximate form of the letter “Z,” with one leg measured at a length of approximately 7 1/32 inches, and the opposite leg measured at a length of approximately 4 3/16 inches. The shape is approximately 13 inches in height, and is purchased in lengths of either 28 feet 1 inch or 30 feet 10 inches. The piece weighs 51.2 pounds per foot. The Z-bars are then cut into four equal lengths, and two pieces are welded together to form a rectangular-shaped housing which is approximately seven to eight feet long.

The Tank Car Committee submits that the following descriptive language can be used as the basis for the requested exclusion for “Type 2” Z-bars:

A fabricated steel shape referred to as a “Type 2” Z-bar, used in the manufacture of end sills for railway tank cars, containing vanadium, and conforming to ASTM Standard A-572-50. The steel shape in the condition as imported is in the approximate form of the letter “Z,” with one leg measured at a length of approximately 7 1/32 inches, and the opposite leg measured at a length of approximately 4 3/16 inches.

The Z-bars become the end sills on railway tank cars. The car’s couplers, yokes and gears are housed inside the sill. One Z-bar is required for each tank car manufactured.

Three schematics are attached as Exhibit 1 which depict the Z-bar and its placement on a tank car. The first schematic shows a stub sill tank car. The second schematic shows the bottom and side views of the end of a stub sill tank car with the sill attached. The third schematic shows a half-section of a tub sill, and the specific positioning of the Z-bar as an integral component of that sill.

and sections of iron or nonalloy steel: ... Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded.”

Articles classified under subheading 7216.50.00, HTSUS were included in the request for an initiation of a “section 201” investigation submitted by Ambassador Robert Zoellick on June 22, 2001. Specifically, the relevant subheading was included in Annex I of that request which covered “carbon and alloy long products.” For data collection purposes, articles classified under subheading 7216.50.00, HTSUS were included by the U.S. International Trade Commission in Product Grouping 9, which covered “hot-rolled bar and light shapes.”

To the best of our knowledge, there are other imported articles aside from Z-bars which are classified under subheading 7216.50.00, HTSUS.

B. Governmental and Industry Requirements For Tank Cars Require That A Specific Type of Steel Be Used For the Z-Bar: The Association of American Railroads (AAR), on behalf of the U.S. Department of Transportation, is responsible for ensuring that the materials used by rail car manufacturing facilities, as well as the operations and procedures implemented by those facilities, meet regulatory standards. To that end, the AAR has developed certain guidelines which have been adopted by the Department of Transportation and rail car manufacturers as the industry standard. The relevant standard for tank car manufacturing is known as M-1002.

The relevant portion of M-1002 is section 4.6.3 of Appendix M, a copy of which is set forth as Exhibit 2. Z-bars are manufactured from ASTM A572 structural steel. Section 4.6.3 of M-1002 requires that only “Type 2” ASTM A572 structural steel be used on tank cars. The key element of Type 2 ASTM A572 structural steel, and that which differentiates Type 2 from Type 1 ASTM A572 structural steel, is the presence of vanadium (approximately 0.05 percent, by weight). In contrast, the key element of Type 1 ASTM A572 structural steel is the presence of niobium. This is a critical distinction: Type 1 ASTM A572 structural steel can be used as Z-bars up to 3/8 inch in thickness for freight cars other than tank cars (*e.g.*, box cars and gondola cars). However, tank cars, unlike other types of freight cars, are post-weld heat-treated, meaning that they are subjected to a heat treatment with temperatures up to 1,200 degrees Fahrenheit after the welding on the car is completed.³ Niobium is not a suitable material for heat treatment of the degree required for tank cars since it loses “toughness” as it deteriorates under the excessive heat. However, vanadium is a much tougher element, and can withstand post-weld heat treatment. For this reason, Type 2, rather than Type 1, ASTM 572 structural steel is required for tank cars.

C. Type 2 ASTM A572 Structural Steel Is Not Manufactured In the United States: Only one U.S. steel producer, Nucor Corporation, headquartered in Charlotte, NC, manufactures Z-bars. However, Nucor will only roll “Type 1” Z-bars, and consistently refuses to roll “Type 2” Z-bars. The reason for this is rather simple: since “Type 1” Z-bars are suitable for all types of freight cars other than tank cars, that is where the demand is.⁴ As a result, Nucor has set up its rolling mill and in-line furnace to

³ More stringent materials requirements are established for tank cars since these type of cars are typically used for the transport of hazardous materials under pressure, such as chlorine, ammonia, liquefied petroleum and sulfuric acid.

⁴ Annual production of new tank cars range between 6,000 and 10,000 cars, and typically represents less than one-fourth of total freight car production in any given year. For example, in 2000, 9,766 new tank cars were produced in the United States, compared to 46,000 cars of other categories (*i.e.*, box cars, hoppers, gondolas and flat cars). In 1999, 12,801 new tank cars were produced, compared to more than 61,000 cars of other categories.

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manufacture “Type 1” Z-bars, and has stated that it can not justify the expense required to alter its production line in order to produce “Type 2” Z-bars.

U.S. tank car manufacturers have therefore, by necessity, been required to source their Z-bar requirements from overseas. The vast majority of these purchases are from a manufacturer in Luxembourg, Ares S.A. The U.S. importer for most of these purchases is Trade Arbed in New York.

An affidavit relating these facts by Donald Olenik, Director of Materials for Union Tank Car Company, a U.S. producer of railway tank cars and a member of the Tank Car Committee, is attached as Exhibit 3.

D. Data On U.S. Imports and U.S. Commercial Shipments of “Type 2” ZBars:

Set forth at Exhibit 4 is the Exclusion Request Data Sheet previously submitted to the U.S. International Trade Commission on behalf of the Tank Car Committee with respect to the request for exclusion for “Type 2” Z-bars. The Data Sheet details the estimated volume and value of U.S. imports of the subject product, and the estimated quantity of U.S. producers’ commercial shipments of the product. Estimated U.S. consumption of the subject product is equal to imports plus U.S. shipments.

There has been no U.S. production of “Type 2” Z-bars since mid-1997, and there are presently no U.S. manufacturers of the product.

E. U.S. Tank Car Manufacturers Will Face Greatly Increased Production Costs If Import Restrictions Are Placed On “Type 2” Z-Bars Sourced From Foreign Manufacturers:

U.S. tank car manufacturers face greatly increased production costs if import restrictions are placed on “Type 2” Z-bars sourced from foreign manufacturers. There is no reason to believe that U.S. manufacturers, and specifically Nucor, will decide to start production of this article if import relief is recommended and implemented as a result of this proceeding: they have consistently expressed no interest in this business.

The only effect of import restrictions would be to significantly increase the costs of U.S. tank car manufacturers, whether those costs are in the form of additional duties or in the form of quantitative restrictions. Indeed, depending on the manner and form of a quantitative restriction, it is possible that U.S. tank car manufacturers will be blocked from obtaining *any* “Type 2” Z-bars from overseas. In that case, either U.S. tank car production will be forced to shut down for the duration of the import relief, or the U.S. Government, AAR and the tank car industry will be forced to diminish what has been considered an essential standard for safety and reliability. This former possibility could lead to a severe economic loss; the latter possibility could lead to dangerous conditions and mishaps. Now is surely not the time to force diminished standards relating to the transport of hazardous materials.

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Since there is no domestic production of “Type 2” Z-bars, and because no other type of structural steel can be used in the place of “Type 2” Z-bars, the Tank Car Committee respectfully submits that an exclusion from any import relief provided as a result of this investigation and proceeding is appropriate and necessary for “Type 2” Z-bars. Such an exclusion would be consistent with, and in furtherance of, the purpose of a global safeguard investigation. The purpose of this investigation and proceeding is to facilitate a positive adjustment to import competition.⁵ This statutory proceeding aims to ameliorate the impact of increasing imports on a domestic industry producing a like or directly competitive article; it is not intended as a vehicle for domestic industries to develop new markets.⁶ In addition, such an exclusion would be wholly consistent with the results of prior proceedings conducted under “section 201” of the Trade Act where the President excluded from the implemented import relief products which were not produced in the United States in commercial quantities.

F. Conclusion: For the reasons set forth in this submission, the Tank Car Committee respectfully submits that “Type 2” Z-bars be excluded from any import relief which the President may implement as a result of this investigation and proceeding.

Sincerely,

/s/

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⁵ See 19 U.S.C. §2251(a) (if the Commission finds that increasing imports are a substantial cause of serious injury to the domestic industry or threaten the industry with serious injury, the President shall take all appropriate actions that “will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.”)

⁶ For this same reason, the Tank Car Committee submits that it is legally irrelevant whether a domestic manufacturer or group of manufacturers may have the theoretical capability to produce the article in question. If domestic manufacturers do not manufacture the article in question (particularly, as is the case here, for reasons having nothing to do with import competition) and have displayed no prior interest in manufacturing the article, the U.S. International Trade Commission should not find that a relevant “domestic industry” exists, and “import relief” should not be provided.

